In the High Court of Judicature at Madras

Dated:14.06.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM

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Civil Revision Petition (PD) No.464 of 2006
and C.M.P.No.3962 of 2006

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Manikandan .. Petitioner

vs.

N.V. Sunil Kumar .. Respondent

Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 22.07.2005 made in I.A.No.3 of 2005 in O.S.No.943 of 2004 on the file of First Additional District Judge, Coimbatore

For petitioner : Mr. N. Damodaran

For respondent / caveator : Ms. P.T. Asha for M/s. Sarvabhuman Associates

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ORDER

The civil revision petition is directed against the order dated 22.07.2005 made in I.A.No.3 of 2005 in O.S.No.943 of 2004 on the file of First Additional District Judge, Coimbatore, in and by which the learned Judge dismissed the said application as well as another connected application, viz., I.A.No.2 of 2005.

2. Third defendant in the said suit filed I.A.No.3 of 2005 before the Court below praying for rejection of the Plaint. It is further seen that the other defendants, viz., D.1 and D.2 filed I.A.No.2 of 2005 for the same relief. The learned District Judge, after going through various averments in the Plaint as well as the defence taken in the written statement and in view of the statutory provision, viz., Order 7 Rule 11 (d) of Code of Civil Procedure, found that the defendants have not made out a case for rejection of Plaint at this stage, dismissed both the petitions. Aggrieved by the said order, the third respondent alone filed the present revision.

3. Heard the learned counsel for the petitioner.

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4. In view of the stand taken by the third defendant/petitioner herein, I verified various averments made in the Plaint and the reliefs sought for therein as well as the defence taken in the written statement. After perusal of the same and the reasoning of the learned Judge, I am of the view that the objection raised by the petitioner cannot be gone into by this Court at this stage without proper evidence in the form of oral and documentary. It is not in dispute that the petitioner - third defendant is free to raise all his objections, including the objection raised in the I.A., at the time of trial. Since as observed earlier it requires more materials in the form of evidence, I agree with the conclusion arrived at by the learned Judge and I do not find any error or infirmity in the impugned order under challenge. Accordingly, the civil revision petition fails and the same is dismissed. No costs. Consequently, connected CMP., is also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

The First Addl. District Judge
Coimbatore.

+1cc to Mr.N.Damodaran, Advocate Sr 24585
+1cc to M/s. Sarvabhauman Associates Sr 24562

JP (CO)
km/22.6.

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